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THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D.C. 20505

OLC 81-0426/a

Legislative Counsel

22 APR 1981

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

DD/A REGISTRY

FILE: Security - 4-1

Dear Mr. Frey:

This is in response to a request by your Office for the views of the Central Intelligence Agency on H.R. 1049, a bill "to amend the Privacy Act of 1974." For the reasons outlined below, the Central Intelligence Agency strongly opposes enactment of this legislation.

Under subsection (j)(1) of the current Privacy Act the Central Intelligence Agency has, with some enumerated exceptions, the authority to exempt systems of records from the Act's provisions. The Agency has used this authority only to the extent necessary to protect intelligence sources and methods, and to enable it to carry out its statutory responsibilities. H.R. 1049 would delete the general exemption authority for the Central Intelligence Agency under subsection (j)(1), as well as the specific exemptions in subsection (k). In their place, the Bill provides a single exemption subsection (b)(3), which is similar to the subsection (b)(1) exemptions contained in the Freedom of Information Act, but with one critical difference. Unlike the FOIA, there is no provision in H.R. 1049 for information which is specifically exempted from disclosure by statute. Because of the omission of this exemption, the Director of Central Intelligence would not be able to rely upon the National Security Act of 1947 or the Central Intelligence Agency Act of 1949 to protect records concerned with intelligence sources or methods, the Agency's organization and functions, or the names, titles, and numbers of Agency personnel. Such a result would have a devastating impact upon the Agency's ability to function and on the Director's ability to fulfill his statutory responsibility for the protection of intelligence sources and methods.

The deletion of the subsection (j)(1) exemption would pose further problems. It would require the Central Intelligence Agency to identify for requesters individuals or organizations to whom information pertaining to the requester has been disclosed, unless exempted under proposed subsection (b)(3). Again, the proposed exemptions are insufficient to

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protect intelligence sources and methods in this regard. In addition, the Agency would no longer be exempt from the requirements of subsection (e)(3)(A)-(D) of the current Privacy Act, which are found in subsection (e)(1)(B) of the proposed Bill. To require the Agency to give notices to each person from whom it gathers information as set forth in subsection (e)(1)(B) is inherently incompatible with the nature of the Agency's work.

For these reasons, and additional problems of a similar nature throughout H.R. 1049, the Central Intelligence Agency strongly opposes enactment of this legislation. The Bill would seriously jeopardize the ability of the Agency to fulfill its statutory responsibilities. H.R. 1049 runs diametrically counter to the President's determination to enhance the nation's intelligence capabilities and promote the more efficient and effective performance of intelligence functions.

Should you have any questions concerning our position with regard to H.R. 1049, please do not hesitate to contact this Office directly. We would appreciate being kept closely informed concerning the development of an Administration position on this legislation.

Sincerely

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Frederick P. Hitz
Legislative Counsel

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